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November 13, 1996

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Federal Communications Commission
Office of Secretary

William F. Caton, Acting Secretary
Federal Communications Commission
Room 222 -- Mail Stop 1170
1919 M Street N.W.
Washington DC 20554

DOCKET FILE COPY ORIGINAL

**Re: Petition for Rule Making filed by The American Radio Relay
League, Inc., RM-8737**

Dear Mr. Caton:

On behalf of Symbol Technologies, Inc. ("Symbol"), a manufacturer of Part 15 spread spectrum data communications equipment, I am filing the original and one copy of the attached written ex parte communication pursuant to Section 1.1206(a)(1) of the Commission's Rules.

If there are any questions about this filing, please call me at the number above.

Respectfully submitted,



Mitchell Lazarus
Counsel for Symbol Technologies, Inc.

cc: Michele Farquhar, Chief
Thomas P. Stanley, Chief Engineer
Wireless Telecommunications Bureau

Raymond A. Martino
Director, RF Engineering
Symbol Technologies, Inc.

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November 13, 1996

Michele Farquhar, Chief
Wireless Telecommunications Bureau
Federal Communications Commission
Room 5002
2025 M Street N.W.
Washington DC 20554

**Re: Petition for Rule Making Filed by The American Radio Relay
League, Inc., RM-8737**

Dear Ms. Farquhar:

I am writing on behalf of Symbol Technologies, Inc. ("Symbol"), a leading manufacturer of Part 15 spread spectrum data communications equipment, to follow up on my letter of November 5 opposing the above-referenced Petition for Rule Making ("ARRL Petition").

The Petition seeks to remove certain technical restrictions on the use of spread spectrum communications by licensees in the Amateur Radio Service. In my November 5 letter, I listed some of the industries that depend on their multi-hundred-million dollar investment in unlicensed Part 15 spread spectrum devices at 902-928 and 2400-2483.5 MHz. I urged the Commission either to deny the Petition or to limit amateur spread spectrum operators to Part 15 standards for output power and antenna gain when operating in the bands shared with Part 15.

Symbol recognizes, however, that the Commission may prefer to issue a Notice of Proposed Rule Making and to solicit public comment before taking other action on the Petition. **If the Commission issues a Notice, Symbol respectfully requests that it seek comment in general terms on appropriate maximum power levels and antenna gains for amateur spread spectrum operations in the Part 15 bands.** ARRL has already offered to limit output power in excess of one watt to "that which is required for the communication."¹ Part 15 interests

¹ Petition at 9.

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Michele Farquhar, Chief

November 13, 1996

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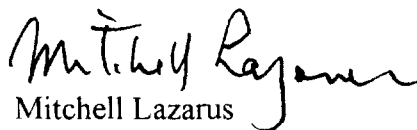
may want to suggest alternate formulations for limiting power in the Part 15 spread spectrum bands. The use of general language in the Notice, however brief, will open the proceeding to variations on ARRL's suggestion.

A general request for comment on power limits still leaves the Commission free to adopt ARRL's suggestion, or to take whatever other action it deems appropriate on the basis of a full record. By omitting the issue from the Notice, however, the Commission may lose the option of adopting alternative power limitations, at least without issuing a Second Notice. The courts consistently hold a final agency rule to be valid only if it is either set out in the Notice of Proposed Rule Making or is a "logical outgrowth" of the Notice.² A rule must be struck down if its departures from the Notice "are so major that the original notice did not adequately frame the subjects for discussion."³ Here, the Commission can maintain maximum flexibility, without in any way limiting its ultimate decision, by specifically asking for comment on output power and antenna gain in amateur spread spectrum operations in the sub-bands shared with Part 15 spread spectrum.

Kindly date-stamp and return the enclosed extra copy of this letter.

If there are any questions about this filing, please call me directly at the number above.

Respectfully submitted,


Mitchell Lazarus

² E.g., Omnipoint Corp. v. FCC, 78 F.3d 620, 631 (D.C. Cir. 1996).

³ *Id.*, citing Connecticut Light and Power Co. v. Nuclear Regulatory Comm'n, 673 F.2d 525, 533 (D.C. Cir.), cert. denied, 459 U.S. 835 (1982).

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Michele Farquhar, Chief

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cc (by hand):

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cc (by Federal Express):

Raymond A. Martino
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